

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 465 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 5-17-1-11 IS ADDED TO THE INDIANA CODE
- 4 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 5 1, 2003]: **Sec. 11. IC 5-22-16-4(b) applies to a lease or purchase of**
- 6 **personal property made after June 30, 2003, by an agency (as**
- 7 **defined in IC 4-13-2-1) or a state educational institution (as defined**
- 8 **in IC 20-12-0.5-1) to the same extent as if the lease or purchase**
- 9 **were subject to IC 5-22.**
- 10 SECTION 2. IC 5-22-16-4 IS AMENDED TO READ AS
- 11 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) An offeror that
- 12 is a foreign corporation must be registered with the secretary of state
- 13 to do business in Indiana in order to be considered responsible.
- 14 (b) **This subsection applies to a purchase of supplies or services**
- 15 **for a state agency under a contract entered into or purchase order**
- 16 **sent to an offeror (in the absence of a contract) after June 30, 2003,**
- 17 **including a purchase described in IC 5-22-8-2 or IC 5-22-8-3. A**
- 18 **state agency may not purchase property or services from a person**
- 19 **that is delinquent in the payment of amounts due from the person**
- 20 **under IC 6-2.5 (gross retail and use tax). A purchasing agent shall**
- 21 **require an offeror submitting a bid or contract to certify that the**
- 22 **offeror is not an ineligible vendor under this subsection.**
- 23 (c) The purchasing agent may award a contract to an offeror pending
- 24 the offeror's registration with the secretary of state. If, in the judgment

of the purchasing agent, the offeror has not registered within a reasonable period, the purchasing agent shall cancel the contract. An offeror has no cause of action based on the cancellation of a contract under this subsection."

Page 8, between lines 40 and 41, begin a new paragraph and insert:

"SECTION 23. IC 6-2.5-4-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003] **Sec. 14. The department shall provide the Indiana department of administration and each purchasing agent for each state educational institution (as defined in IC 20-12-0.5-1) with a list of persons that are delinquent in remitting or paying amounts due to the department under this article. The department shall periodically revise the list to notify the Indiana department of administration and state educational institutions of additions or deletions from the list.**"

Page 17, between lines 10 and 11, begin a new paragraph and insert:

"SECTION 34. IC 6-2.5-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) A person that:

(1) makes retail transactions from outside Indiana to a destination in Indiana;

(2) does not maintain a place of business in Indiana; and

(3) **either:**

(A) engages in the regular or systematic soliciting of retail transactions from potential customers in Indiana;

(B) enters into a contract to provide property or services to an agency (as defined in IC 4-13-2-1) or an institution of higher education (as defined in IC 20-12-0.5-1); or

(C) agrees to sell property or services to an agency (as defined in IC 4-13-2-1) or an institution of higher education (as defined in IC 20-12-0.5-1);

shall file an application for a retail merchant's certificate under this chapter and collect and remit ~~the use~~ tax as provided in this article.

Conduct described in subdivision (3)(B) and (3)(C) occurring after June 30, 2003, constitutes consent to be treated under this article as if the person has a place of business in Indiana or is engaging in conduct described in subdivision (3)(A), including the provisions of this article that require a person to collect and remit tax under this article.

(b) A person is rebuttably presumed to be engaging in the regular or systematic soliciting of retail transactions from potential customers in Indiana if the person does any of the following:

(1) Distributes catalogs, periodicals, advertising flyers, or other written solicitations of business to potential customers in Indiana, regardless of whether the distribution is by mail or otherwise and without regard to the place from which the distribution originated or in which the materials were prepared.

- 1 (2) Displays advertisements on billboards or displays other
2 outdoor advertisements in Indiana.
- 3 (3) Advertises in newspapers published in Indiana.
- 4 (4) Advertises in trade journals or other periodicals that circulate
5 primarily in Indiana.
- 6 (5) Advertises in Indiana editions of a national or regional
7 publication or a limited regional edition in which Indiana is
8 included as part of a broader regional or national publication if
9 the advertisements are not placed in other geographically defined
10 editions of the same issue of the same publication.
- 11 (6) Advertises in editions of regional or national publications that
12 are not by the contents of the editions geographically targeted to
13 Indiana but that are sold over the counter in Indiana or by
14 subscription to Indiana residents.
- 15 (7) Broadcasts on a radio or television station located in Indiana.
- 16 (8) Makes any other solicitation by telegraphy, telephone,
17 computer data base, cable, optic, microwave, or other
18 communication system.
- 19 (c) A person not maintaining a place of business in Indiana is
20 considered to be engaged in the regular or systematic soliciting of retail
21 transactions from potential customers in Indiana if the person engages
22 in any of the activities described in subsection (b) and:
 - 23 (1) makes at least one hundred (100) retail transactions from
24 outside Indiana to destinations in Indiana during a period of
25 twelve (12) consecutive months; or
 - 26 (2) makes at least ten (10) retail transactions totaling more than
27 one hundred thousand dollars (\$100,000) from outside Indiana to
28 destinations in Indiana during a period of twelve (12) consecutive
29 months.
- 30 (d) The location in or outside Indiana of vendors that:
 - 31 (1) are independent of a person that is soliciting customers in
32 Indiana; and
 - 33 (2) provide products or services to the person in connection with
34 the person's solicitation of customers in Indiana, including
35 products and services such as creation of copy, printing,
36 distribution, and recording;

- 1 is not to be taken into account in the determination of whether the
- 2 person is required to collect use tax under this section."
- 3 Renumber all SECTIONS consecutively.
(Reference is to ESB 465 as printed March 21, 2003.)

Representative Frenz